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COMMENTS

Mr. William Caton
Acting Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon-New Jersey Inc. for Authorization To Provide In-Region, InterLATA Services in State of New Jersey, Docket No. 01-347

Dear Mr. Caton:

Verizon files these comments in response to the FCC's March 8, 2002 Public Notice seeking comments in connection with the New Jersey Board of Public Utility's release of its *Final Order* regarding UNE rates.

Prior to the time that Verizon filed its application here, the New Jersey Board of Public Utilities adopted a full suite of rates for unbundled elements that it determined are TELRIC-compliant in all respects. The Board itself dictated the key inputs to be used in computing these rates and outlined its resolution of the key issues raised in the proceedings before it on a number of occasions. These include the Board's November 20, 2001 Open Meeting, its November 20, 2001 *Secretary's Letter*, its December 17, 2001 *Summary Order* approving the compliance filings made by Verizon on December 3 and December 10, 2001 (which themselves detailed all of the inputs used to re-calculate rates at the Board's direction), and its January 14, 2002 *Consultative Report* to this Commission. As a result, both the rates themselves and all of the inputs used to set those rates have long been known and have been the subject of extensive comment here. The Board's recent *Final Order*, which this Commission may consider as well, merely provides further confirmation that the previous showing is correct. And, of course, as we previously demonstrated, the rates adopted by the Board benchmark to the newly-established New York rates that AT&T and WorldCom have championed as the standard to be followed, and under the Commission's precedent would have to be approved on that basis in any event.

1. As we previously demonstrated, the unbundled network element rates adopted by the New Jersey Board were the culmination of an exhaustive review based on input from all interested parties. *See Garzillo/Prosini Declaration* at 10-25. The Board announced its decision at its public meeting on November 20, 2001, and directed the issuance of a Secretary's Letter reflecting that decision. *See* App. F, Tab 5. At that meeting, the Board evaluated competing proposals with respect to both recurring rates and non-recurring rates that had been submitted by Verizon, AT&T, WorldCom, the Division of the Ratepayer Advocate and others. Based on the input of all the parties, the Board announced that it was setting rates for a number of elements. These included "recurring rates for 2-wire unbundled loops, non-recurring rates for 2-wire, new and additional loops, 2-wire hotcut, initial and additional, POTS/ISDN-BRI Platform new, initial and additional, and POTS/ISDN-BRI Platform migration, initial and additional." *See* November 20, 2001 Letter from Henry M. Ogden to Bruce D. Cohen, Esq. ("Secretary's Letter") at 1 (App. F, Tab 6) (copy attached for convenience at Attachment 1). The Board also "rendered its findings related to inputs and assumptions for the switch port and usage rates," and directed Verizon to re-run its cost models "for all rate elements not specifically set by the Board" – including "recurring, non-recurring, switching and rates developed independently of those models" – using the modified inputs prescribed by the Board. *Id.* at 1-2. Among other things, the *Secretary's Letter* set forth the Board's prescription for the key inputs that this Commission has addressed in previous long distance applications (and more). For example, the Board prescribed the fill factors, loop technology assumptions, cost of capital, depreciation, expense factors, gross revenue loadings, mix of new and growth switches, and the level of the switch discounts. *See id.* at 2-3.

Likewise, the Board directed Verizon to "re-run its non-recurring cost models to include all the aforementioned revisions" that the Board had adopted for use in computing *recurring* costs, such as network technology assumptions. *See id.* at 2-3. It also directed Verizon to modify a number of additional inputs in response to the claims of other parties during the state proceedings. *See id.* at 3-4. For example, the Board ordered Verizon to revise the time estimates for a number of specified tasks, to eliminate the time associated with other identified tasks (including the time for certain tasks that it concluded would be made obsolete by OSS improvements), and to adjust the time estimates used to calculate the non-recurring charges for "additional" lines in a number of respects. *See id.* at 3-4; *Garzillo/Prosini Reply Declaration* ¶ 25 (listing revisions). And it directed Verizon to "revise all non-recurring rates for service orders, C.O. wiring, provisioning, and field installations that were not revised by the Board, but include similar assumptions to those changed by the Board." *See Secretary's Letter* at 3.

Verizon submitted compliance filings on December 3, 2001, and December 10, 2001, incorporating all the requirements set forth in the *Secretary's Letter*. *See* App. F, Tabs 7 & 8. These compliance filings included spreadsheets that set forth, in great detail, the assumptions employed to develop all rates. *See* Ex Parte Letter from Clint E. Odom, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission (January 25, 2002) ("Cost Studies Ex Parte").

On December 17, 2001, the Board released its Order formally adopting the revised rates and summarizing its resolution of the key issues that were raised by the parties during the course of the pricing proceedings. *See* Summary Order of Approval, Dkt. No. TO00060356 (Dec. 17, 2001). That Order, generally referred to as the *Summary Order*, "present[ed] the Board's findings for all recurring and non-recurring rates, as well as the results of Verizon model re-runs based upon the Board-approved inputs." *Summary Order* at 1. In particular, the Board set forth its conclusions and summarized its reasoning for each of the key inputs that were prescribed by the Board. To begin with, the Board explained that it adopted Verizon's recurring cost model "as the starting point" in establishing recurring rates, but that it had found it necessary to modify certain key inputs including the key inputs addressed by this Commission in previous long distance applications. *Summary Order* at 4.[1] For example, the Board: (1) explained that it had adopted revised fill factors and the basis for the change, (2) explained that it adopted the depreciation lives proposed by WorldCom because it concluded they "are consistent with the principles articulated by the FCC"; (3) explained that it had revised the expense factors to eliminate expense it was not convinced Verizon would continue to incur; (4) explained that it adopted the low cost of capital recommended by the Division of the Ratepayer Advocate and why; (5) explained that it had directed Verizon to change its assumptions on support structures because it believed that Verizon's forward-looking adjustment would yield inflated results; and (6) explained that it had directed Verizon to modify certain of its assumptions with respect to the mix of copper and DLC technologies included in its unbundled loop study in a manner "consistent with the recommendations of AT&T, WorldCom, the Advocate and others." *Summary Order* at 4-6.

With respect to non-recurring rates, the Board explained that it likewise used Verizon's non-recurring cost model as the starting point in calculating rates. The Board explained that the non-recurring "models submitted by AT&T and Verizon were similar in their approach," but concluded that the AT&T model was inferior because it identified "far fewer rate elements" and because it "assumed away a number of potential costs under the guise that they should have been included as part of recurring costs, and/or are unnecessary in a forward-looking environment due to mechanized improvements." *See id.* at 6-7. Nonetheless, the Board again explained that it had required Verizon to re-run the model to reflect changes to many of the inputs, and why. In addition to requiring the same changes that it had prescribed for use in calculating recurring rates (such as adjusting the mix of copper and DLC systems to be consistent with the recurring model, *see id.* at 8), the Board explained that it had concluded that the inputs proposed by Verizon had included what it considered to be "unnecessary manual steps" and "unrealistic time estimates." *See id.* at 7. As a result, the Board "found it necessary to make numerous adjustments to Verizon's model," focusing in particular on the non-recurring charges that apply to new loops, hot cuts and platform lines. *See id.* at 7. "Based upon the arguments of the parties and an analysis of the critical inputs associated with" those elements, the Board explained, it had prescribed eight generic changes to be made in re-calculating all non-recurring costs, including

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[1] As the Board explained, it concluded "that the Verizon model most closely approximates the concepts supported by the Board in modeling a forward-looking network." *Summary Order* at 4. The Board concluded that: "The record also supports the adoption of Verizon's switching model. This model is comprised of a series of models and modules developed by Telcordia. The Telcordia Model is an industry standard that has been relied upon by both carriers and regulators alike." *Summary Order* at 8. In contrast, the Board concluded "that the HAI Model, sponsored by AT&T, failed to use TELRIC-compliant inputs and assumptions," and explained that it "is the Board's belief that such an approach would result in Verizon subsidizing CLEC entry into the local markets and eliminate any incentive for CLECs to invest in their own facilities." *Summary Order* at 4.

the hotcut and other non-recurring rates that had been the subject of particular focus. And it had directed Verizon to re-run its non-recurring cost models to reflect all of the changes detailed in the *Secretary's Letter. See id.*

Further, the Board explained that it had "reviewed Verizon's recurring and non-recurring model reruns, including the revised switching runs, as well as the related workpapers, and [was] satisfied that these re-runs are consistent" with the Board's directives. *See id.* at 13. Accordingly, the Board found that the rates "are just and reasonable, and in accordance with law," and adopted those rates as final. *See id.* at 14. The rates approved in the *Summary Order* became effective on December 17, 2001.

The Board's January 14 *Consultative Report* confirmed that the Board had applied TELRIC principles in setting inputs and, in turn, rates, and that those rates had been effective since December 17, 2001. *See* Consultative Report of the New Jersey Board of Public Utilities, CC Dkt. No. 01-347 at 24 (Jan. 14, 2002). The Board explained that "In [its] November 20, 2001 Decision, the Board established rates for recurring and non-recurring elements. In a Secretary's letter, the Board also directed Verizon NJ to rerun their cost models to reflect Board established inputs and assumptions for the rate elements not specifically established at the November 20, 2001 agenda meeting. Verizon has complied with the [Board's] directives ... and the *Summary Order* of December 17, 2001 implements TELRIC rates which Verizon NJ is now bound by law to charge CLEC's effective December 17, 2001." *Id.*

2. Now the soundness of the Board's approach has been confirmed again by the Board's release of its *Final Order*. *See* Decision and Order, Dkt. No. TO00060356 (March 6, 2002) ("Final Order"). That Order further elaborates the Board's reasoning, confirms the holdings of the *Summary Order*, and reiterates the Board's commitment to the TELRIC methodology. The Order does not change any of the rates previously established by the Board or modify any of the conclusions in the *Secretary's Letter* or *Summary Order* with respect to either the rates or the inputs used to calculate those rates -- those have all been known since the *Summary Order*. Rather, it elaborates upon the arguments set forth by the parties during the TELRIC proceeding, and in some instances provides more detail concerning the conclusions it reached when it made its decision in November 2001 and the reasoning that it summarized in the December 17 *Summary Order*.

In its *Final Order*, the Board again explains that it set rates "based upon the existing TELRIC principles." *Final Order* at 11. According to the Board, "[w]e believe that the guiding force in developing TELRIC-compliant rates should focus on Verizon-NJ's existing wire center locations and forward-looking technologies which would permit competitive non-discriminatory access to UNEs at cost-based prices, and at parity with the access that Verizon-NJ provides to itself, consistent with the FCC's rules." *Id.* And the Board made equally clear that, because "TELRIC clearly prohibits the inclusion of embedded costs," "costs that are based on historical expenditures may not be included as specific costs in the TELRIC study." *Id.* at 13.

With respect to recurring rates, the Board confirmed the conclusions it had reached in the *Secretary's Letter* and the *Summary Order*. To start with, the Board again confirmed that, based upon a "careful review of the models presented by the parties" and the extensive record compiled by the parties, "the Verizon NJ model most closely approximates the concepts it supports related to a forward-looking costing methodology and provides the appropriate starting point for our analysis." *Final Order* at 25.[2] Nonetheless, the Board also explained that, while all the parties that participated actively on cost model issues other than AT&T recommended using Verizon's model, "we believe that it is necessary to significantly modify many of its inputs and assumptions to produce true TELRIC-compliant results as suggested by various parties." *Id.* at 26.

For example, the Board again explained (at 37-39) that it had adopted the cost of capital proposed by the Division of the Ratepayer Advocate, which was even lower than the cost of capital proposed by AT&T. Although the resulting cost of capital (8.8 percent) fails to take into account either the risk of operating in a competitive market or the added risk inherent in the TELRIC methodology -- as the FCC, AT&T and WorldCom all agree it must[3] -- it clearly does not exceed the range that the FCC previously has found acceptable. *See, e.g., Rhode Island Order* ¶ 30 (approving higher cost of capital (9.5%)); *Pennsylvania Order* ¶ 57 (same (9.8%)). Likewise, while the FCC previously has approved the use of GAAP lives (as Verizon had proposed) for depreciation purposes, *see, e.g., Kansas-Oklahoma Order* ¶ 76 (noting that "a state may find that a depreciation schedule such as [one based on GAAP] is appropriate, and AT&T has failed to indicate why it would not be so here"), the Board nonetheless adopted the longer lives proposed by WorldCom, see *Final Order* at 43-45. Similarly, while other states have held that the expense factor should properly include advertising expenses that benefit all users of Verizon's network, *see* Order on Unbundled Network Element Rates, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network*

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[2] The Board also further explained that it had declined to use the HAI model sponsored by AT&T because of a number of deficiencies identified in the record, including its failure to use TELRIC-compliant inputs, the fact that it produced investment and expense levers only 1/3 and 1/5 those that Verizon experienced (suggesting it dramatically understated forward-looking costs), as well as a number of other shortcomings and anomalies that were revealed during the New Jersey proceeding. *See id.* at 25-26.

[3] *See, e.g.,* Reply Brief for Petitioners Federal Communications Commission and the United States, *Verizon Communications, Inc., et al. v. Federal Communications Commission, et al.* at 12 n. 8 (U.S. July 23, 2001) (No. 00-511) (noting that TELRIC model must "take[] into account not only existing competitive risks . . . but also risks associated with the regulatory regime to which a firm is subject"); Live Testimony of Terry Murray, witness for AT&T/WorldCom, in *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Dkt. No. 00-218, Tr. 3408-09 (conceding that in setting cost of capital and depreciation rates, "you have to consider the competitive effects of a regime that has TELRIC pricing"); *id.* Tr. 3405 (acknowledging that TELRIC requires inputs that "mimic the outcome that would happen if there were a competitor" capable of "taking over the full scale of demand," and concluding that "you have to consider the competitive market depreciation [and] the competitive market cost of capital").

Elements, Case 98-C-1357, at 69-70 (N.Y. PUC Jan. 28, 2002) (allowing certain advertising expenses to be included in cost factors), the Board nonetheless reduced the expense factor to eliminate such expenses at the behest of AT&T and WorldCom. *Final Order* at 51. It also reduced the common overhead factor to the level that originally had been proposed by AT&T and that was supported by the Division of the Ratepayer Advocate. *Id.* at 52, 55.

Likewise, the Board confirmed its previous conclusions with respect to its choice of network assumptions. For example, the Board reiterated that it was reasonable to assume that 60% of loops would be served by fiber -- which assumes "reconstruction of the network with substantially more fiber optic cable (and digital loop carrier equipment) than exists in Verizon NJ's actual embedded network" (*see id.* at 63). But in response to arguments by AT&T and others again explained that it had directed Verizon to assume that 100% of the digital loop carrier systems would be IDLC, rather than predominantly UDLC as Verizon had assumed. *Id.* at 72. While the Board did not take issue with the fact "that IDLC cannot currently be unbundled to provide individual unbundled loops," it explained that its decision here was "[b]ased upon the fact that many of the CLECs have stated that they will utilize UNE-P as the primary vehicle to enter the local market." According to the Board, "[t]he record clearly reflects that UNE-P orders do not have to be unbundled," and because it accepted the CLECs' argument that *platform* arrangements would be the primary entry vehicle, it agreed with AT&T that "the use of 100% IDLC is appropriate in a forward-looking environment." *Id.* at 72.

The Board also confirmed the changes it previously prescribed to the fill factors proposed by Verizon. In particular, the Board "[found] that for copper distribution plant, the forward-looking fill level proposed by VNJ should be revised upwards to 53% based on the recommendations of the [Ratepayer] Advocate." *Id.* at 84. This factor, the Board noted, "provides sufficient spare capacity to address growth, service quality, breakage and defective pairs." *Id.* The Board increased the fill factor for copper feeder to 75%, a figure it believed "represent[ed] the mid-point between Verizon NJ's actual fill level and the relief point of 85%." *Id.* at 85. And for fiber feeder, the Board set a fill level of 77.5%, again based on "the mid-point between Verizon NJ's existing network actual average fiber strand fill level ... and the level at which capacity relief ... would be required." *Id.* at 86. All of the fill levels also are within the range that the FCC previously found to be acceptable. *See Kansas/Oklahoma Order* ¶¶ 79-80 (noting that fill factors from 50 to 75 percent are acceptable).

With respect to switching costs, the Board reaffirmed its decision to start with the Telcordia model submitted by Verizon, "because it more accurately portrays the network for which costs are being developed by utilizing detailed data on calling patterns and usage on a wire center level." Final Order at 110. Nonetheless, in response to arguments by CLECs "that the main differences in the models relate to their inputs and assumptions," "we heed the advice of the parties that urge the Board to examine certain critical inputs to ensure that the resultant output produces proper and lawful forward-looking rates." Id. at 110-111. Based on that examination, the Board had directed Verizon to modify key inputs to the switching model. For example, the Board explained that it rejected use of the 100% "growth addition" discounts proposed by Verizon as inappropriate in a forward-looking network, *see id.* at 119, and concluded that "a proper TELRIC costing methodology should include recognition of both replacement and growth purchases, because a new entrant will conceivably make some add-on switch investments in the future as demand increases," *id.* at 120. The Board concluded that "AT&T presented a reasoned analysis that resulted in a weighting of 79.4% replacement and 20.6% growth," and reiterated that it had adopted "AT&T's replacement/growth mix as the appropriate long-run forward-looking input to the cost of Verizon NJ's switches." *Id.* at 120.

With respect to non-recurring costs, the Board adopted Verizon's model but prescribed various modifications. *See id.* at 157. As it had in the *Summary Order*, the Board again explained that "[w]hile the two models [submitted by Verizon and AT&T] were similar in their approach ... the AT&T NRCM identified far fewer elements than the Verizon NJ Model and assumed away a number of potential costs." *Id.* The Board chose to begin with the Verizon NRCM because "it would be far more expedient to adjust the inputs and assumptions in the Verizon NJ NRCM ... than to 'build' new rate elements for costs which are appropriately non-recurring costs, and to adjust other inputs and assumptions in the AT&T NRCM, which examined only an approximate 50 potential rate elements." *Id.* at 158.

The Board also reiterated its prior conclusion that adjustments to Verizon's model were necessary to correct what it considered to be "deficiencies," including what it described as injecting "unnecessary manual steps, such as retyping orders, into the processing of orders and unrealistic time estimates throughout its model." *Id.* at 158. The Board explained that, while it had required Verizon to re-calculate all the non-recurring costs to reflect the prescribed changes, the Board itself had re-calculated the specific rates that had been the principal focus of its review, including the non-recurring charge for hotcuts. For example, the Board computed different hotcut charges for copper loops and IDLC loops based upon the extensive evidence before it demonstrating the step-by-step process for completing a hotcut on each type of loop. *See Cost Studies Ex Parte*; *Final Order*, Attachment (rate schedule). That evidence also showed, of course, that unlike UNE-P arrangements (see above), a stand-alone loop could not be provisioned over IDLC and that additional work is involved when a customer is served by IDLC to first transfer the customer to a copper loop that *can* be unbundled. And these differences are reflected in the approved inputs used to compute the rates.

Moreover, the Board' *Final Order* again detailed all the specific changes that it had prescribed to the inputs and the reasons for those changes. For example, the Board reiterated that it agreed with AT&T and other CLECs that "the NRCM must include and be consistent with, the Board's findings" regarding Verizon's recurring model, such as "revisions to depreciation, cost of capital, digital loop carrier, etc." In addition, the Board again described the eight specific changes that it had prescribed in the *Summary Order* that affected the calculation of new "service order," "C.O. wiring," "provisioning," and "field installation" costs. *See id.* at 158-61.[4] For example, the Board reiterated its previous conclusion that travel time estimates should be

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4 The Board directed Verizon to (1) revise all travel times to no more than 20 minutes; (2) adjust time estimates for tasks associated with "additional" lines to be equal to the time used for that task with respect to "initial" lines where the "additional" time estimate had been greater than the "initial" estimate; (3) eliminate all computer connect times for "additional" lines; (4) eliminate all times associated with notifying a CLEC to complete an order; (5) eliminate all times associated with scheduling teams, contacting the CLEC, verifying service orders, obtaining CLEC approval, completing the order, and notifying

reduced to 20 minutes, which it based on "AT&T's recommendation." *Id.* at 160, 163. It also eliminated or reduced estimates associated with additional lines, based on its conclusion that those tasks either could be performed at the same time or in no longer time than they were performed for initial lines. *Id.* at 160, 163. Likewise, it eliminated the time for field installations for some types of orders where it agreed with the CLECs that they would not be needed (such as for platform orders), *see id.* at 152-53, 160, and reduced the time estimates where it recognized they would be needed, *see id.* at 160. In fact, the Board reduced the time estimates for a number of necessary functions to no more than five minutes each in response to comments from the parties. *Id.* at 161, 163. And it again explained that it agreed with the CLECs that, for the mass market UNE-P orders that AT&T and others had argued would be the principal entry vehicle, certain manual tasks could be eliminated through electronic processing and OSS improvements. *See id.* at 160, 165, 166.

The Board also restated its conclusion, noted in the *Secretary's Letter* and the *Summary Order*, that it was appropriate for Verizon to recover costs associated with the disconnection of UNE service at the time the CLEC chooses to initiate the service. *See Secretary's Letter* at 3; *Summary Order* at 8. As the Board recognized, that "[t]he immediate recovery of non-recurring disconnection costs is a standard practice in the telecommunications industry, because once a service has been disconnected, it is more difficult for an ILEC to recover the costs of the disconnection." *Final Order* at 163. Thus, "disconnection costs are appropriately recovered 'up front.'" *Id.* at 163. But whereas Verizon had proposed to discount the disconnection cost based on a 2.5-year UNE life, the Board found that this approach "should be modified." *Id.* Reiterating the conclusions of the *Secretary's Letter*, which stated that "Service Disconnection should be increased to five (5) years," *see Secretary's Letter* at 3, the Board explained that "[w]e are unconvinced that customer turnover occurs every 2.5 years and FIND that 5 years is a reasonable assumption." *See Final Order* at 163-64.

3. The Commission can, of course, rely on the *Final Order* in rendering its decision on this application. That is especially true where, as here, both the rates and the inputs used in calculating those rates have been known since before this application was filed and already have been the subject of extensive commentary by the parties.

First, there is no issue here with respect to the Commission's "complete as filed" rule. That rule simply requires Verizon to provide its *prima facie* case in its initial application, and prevents parties, including Verizon, from presenting part of that initial *prima facie* case for the first time on reply. *See, e.g., Michigan Order* ¶¶ 52-55; *Kansas/Oklahoma Order* ¶ 21. No party can reasonably dispute that Verizon has done this. As described in detail above, Verizon demonstrated in its application here that it had in place a full suite of rates that were set by the

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the team of cancellations for all "additional" lines when charges for those activities were included in charges for an "additional" line; (6) revise all times associated with gaining access to a premises, locating the terminal, contacting the mechanized loop assignment center ("MLAC") and working with the frame or RCCC to 5 minutes; (7) eliminate all field installation charges associated with migration orders; and (8) eliminate all manual translation times made obsolete by the flow through capabilities of Verizon's OSS. *See Summary Order* at 7-8; *Final Order* at 162-63.

relevant state commission following a comprehensive proceeding conducted in conformance with TELRIC principles. Verizon also included with its initial filing both the *Secretary's Letter* and the *Summary Order*, which presented the Board's conclusions on all key inputs and summarized the reasoning supporting those conclusions. Given the deference accorded to state ratemaking determinations, this is sufficient to make a *prima facie* case. In fact, this Commission and the D.C. Circuit both have explained that because state commissions are assigned the task of setting specific rates under the terms of the Act, the rate determinations of the state commissions are entitled to substantial deference from this Commission in the context of a section 271 proceeding. *See, e.g., New York Order* ¶¶ 238-44; *AT&T Corp. v. FCC*, 220 F.3d 607, 615-16 (D.C. Cir. 2000) (giving "special deference to the FCC," in part because "much of the FCC's order is itself a review of a state agency decision," and the state "possess[es] a considerable degree of expertise"). As a result, where, as here, the state commission has set rates that it has determined are TELRIC-compliant, as well as the inputs used in setting those rates, it should be sufficient not only to make a *prima facie* showing, but also to raise a presumption that the rates satisfy the standards in the Act. Consequently, under the circumstances presented here, there can be no real question that Verizon's application made the required *prima facie* showing.

Second, the complete-as-filed rule has never been applied to information submitted by a state commission. The *Final Order*, of course, is the product of the New Jersey Board. The Board enjoys a statutorily prescribed consultative role in the section 271 process. *See* 47 U.S.C. § 271(d)(2)(B) ("[T]he Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company"). Given this unique role, state commission input has never been treated in the same manner as late-filed information from other parties. Indeed, this Commission's prior orders make that clear. For example, in its *New York Order*, the Commission relied on a state commission order approving a Performance Assurance Plan even though that state commission order was rendered after initial comments on the application had been filed. *See New York Order* ¶ 432 n. 1323. "What is critical to our analysis is that the plans were described in detail in [Verizon's] initial application, and have been subject to extensive comment in this proceeding." *Id.* The case for considering the New Jersey Board's *Final Order* is even stronger. Verizon here, too, described its rates and the inputs in its application, as did the Board itself in the *Secretary's Letter* and *Summary Order* that were submitted with Verizon's application. But whereas the amended PAP was nowhere formalized at the time Verizon submitted its New York application, the New Jersey rates and inputs, as described above, were *already memorialized* in the *Secretary's Letter* and the *Summary Order*, and were in effect. Thus, as explained below, all parties were able to -- and several parties did -- criticize any or all aspects of those rates and the corresponding inputs during the course of this proceeding.[5]

Third, unlike AT&T's recent lengthy ex parte filings, which have attempted to inject a host of new issues and new evidence into this proceeding, the *Final Order* for the most part elaborates upon the findings and reasoning presented in its November 20, 2001 open meeting,

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[5] Moreover, the *Final Order* is a public document, and the Commission is, of course, free to take notice of public documents. *See* Charles H. Koch, Jr., *Administrative Law And Practice* § 5.55 ("An agency may take official notice of another case or other prior proceedings involving a party in the present proceeding").

the November 20 *Secretary's Letter*, and the December 17, 2001 *Summary Order*, all of which predated Verizon's December 20, 2001 application. For this reason, no party has been prejudiced by the timing of the *Final Order*. On the contrary, the parties to this proceeding have commented extensively on the rates adopted by the Board and on many of the individual inputs adopted by the Board. In this proceeding, AT&T and WorldCom have each set forth extensive criticism of a small number of rates and the underlying inputs that they disagree with. For example, they have challenged the Board-ordered network technology makeup and the Board-ordered switch discount mix (adopted at AT&T's behest). They have challenged the Board-ordered inclusion of vertical features in Verizon's switching usage rates (which resulted in a reduction in the switch port rate). They have challenged the Board-ordered busy-hour annualization methodology. They have challenged the Board-ordered fill factors. And they have challenged the Board-ordered non-recurring hotcut rates.

Moreover, while AT&T chose not to make a substantive argument with respect to the non-recurring hotcut rate in this proceeding until their recent *ex parte* filing -- instead arguing (incorrectly) that the rate is somehow too high compared to other states -- they did challenge the rate directly with the New Jersey Board. Of course, the basis for their challenge is patently incorrect. In fact, their principal argument is that the Board should have assumed that no manual work was required to perform a hotcut for IDLC loops. But that is flatly contrary to the Board's conclusion. As noted above, the Board assumed only that an IDLC loop would not have to be physically unbundled in order to provision a *platform* order (in response to CLEC arguments that platform arrangements would be the primary entry vehicle). It made no such assumptions with respect to hotcuts, nor could it, given the extensive evidence to the contrary.[6] In any event, aside from being wrong, their arguments merely emphasize the fact that they have not been prejudiced in their ability to challenge the Board-set rates as a result of the timing of the *Final Order*. After presenting detailed argument on each of these points -- either here or to the New Jersey Board -- they cannot plausibly argue here that the *Final Order*'s recent issuance somehow impairs their ability to criticize Verizon's UNE rates and the underlying inputs, all of which have been in the public record since before Verizon filed its application.

Fourth, even if the complete-as-filed rule *did* apply to the *Final Order*, the D.C. Circuit has made clear that the FCC can waive its own procedural rules where there is reason to do so. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also* 47

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[6] Likewise, AT&T claims that Verizon's non-recurring hotcut rates do not reflect the Board-ordered modifications, including the mandated reduction of "times associated with … working with frame or RCC to 5 minutes." *See Summary Order* at 8. AT&T is wrong. As the Board explains in its order, it was the Board, rather than Verizon, that recalculated the hotcut rate under the inputs set. *See Final Order* at 158-59. In the case of other non-recurring rates that the Board did not recalculate itself, Verizon used a connect time of five minutes for each of the four tasks encompassed by the Board's requirements. These tasks are Field Installation tasks numbers 3 ("Gain Access to Prem. And Demarcation Point/NID"), 4 ("Locate Terminal and/or Cross-Connect Box Feeding Premises"), 6 ("Contact MLAC, if necessary, for new pair assignment," and 7 (Work with Frame, and/or RCCC if necessary, for new pair assignment"). *See Cost Studies Ex Parte*. All the rates that Verizon recalculated reflect these modifications.

U.S.C. § 154(j) ("The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice"). Here, where the *Final Order* merely supplements a detailed *Summary Order* setting forth the New Jersey Board's conclusions and reasoning regarding key rate inputs, and where those rates have already been in effect for over two months, waiver of the complete-as-filed rule would be appropriate, even if that rule were deemed (incorrectly) to apply in the first place.

Fifth, no procedural due process issue would be raised by the Commission's consideration of the *Final Order* in the course of its deliberations. First, other than Verizon, no party to this proceeding has any property or liberty interest subject to constitutional due process protections. *See, e.g., Izaak Walton League of America v. Marsh*, 655 F.2d 346, 361 (D.C. Cir. 1981) (The "interest in avoiding competition [cannot] be viewed as a property or liberty interest creating a right to procedural due process"). Such an interest is a prerequisite to the assertion of any due process argument. Second, even if any party other than Verizon did enjoy a property or liberty interest in the outcome of the proceeding, all parties have had more than ample opportunity to challenge -- and have in fact challenged -- the rates and inputs adopted by the Board, which, as explained in detail above, have been known by all since before Verizon filed its New Jersey section 271 application. Thus, even if any CLEC had a liberty or property interest in this proceeding -- and none does -- that interest would be satisfied.

Finally, even if the Commission did not consider the *Final Order*, Verizon has previously demonstrated that UNE rates in New Jersey benchmark to rates in New York using state-specific minutes-of-use data. *See Verizon February 20 Ex Parte*. Moreover, even the non-recurring hotcut rates about which AT&T complains here are lower than the analogous New York costs, *see Garzillo/Prosini Reply Declaration* ¶ 27, *Verizon February 20 Ex Parte*, *Verizon March 8 Ex Parte*, and are lower, over a 3-year or 5-year UNE life, than the total rates for hotcut loops in other Verizon states as well, *see Garzillo/Prosini Reply Declaration* ¶ 28, *Verizon February 20 Ex Parte*, *Verizon March 8 Ex Parte*. Verizon's New Jersey UNE rates, in short, are TELRIC-compliant.

Sincerely,

Clint E. Odom

Attachment

cc: A. Johns
J. Swift
S. Pie

State of New Jersey
Board of Public Utilities
Two Gateway Center
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November 20, 2001

Bruce D. Cohen, Esq.
Verizon New Jersey, Inc.
540 Broad Street, 20th Floor
Newark, New Jersey 07101

RE: I/M/O the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.
Docket No. TO00060356

Dear Mr. Cohen:

On Tuesday, November 20, 2001, the Board of Public Utilities ("Board") rendered its decision in the above-captioned case. In its decision, the Board established recurring rates for 2-wire unbundled loops, non-recurring rates for 2-wire, new and additional loops, 2-wire hotcut, initial and additional, POTS/ISDN-BRI Platform new, initial and additional, and POTS/ISDN-BRI Platform migration, initial and additional. In addition, the Board rendered its findings related to inputs and assumption for the switch port and usage rates.

Pursuant to the Board's decision, Verizon New Jersey, Inc., formerly known as Bell Atlantic-New Jersey, Inc. ("Company") is directed to re-run its recurring, non-recurring and switching models consistent with the Board's findings utilizing the inputs contained herein for all rate elements not specifically set by the Board, as contained in the previous paragraph, with the exception of switching costs. The Company shall rerun the switch model utilizing the Board approved inputs and assumptions. All model re-runs (recurring, non-recurring, switching and rates developed independently of those models) must include the Board's findings set forth below.

The re-runs must be completed and submitted to the Board and all parties on the Service List no later than December 3, 2001, and must include all work papers (disks and CDs) and a certification verifying the runs, signed by an authorized officer of the Company.

RECURRING COST INPUTS AND ASSUMPTIONS

Fill Factors		
	Distribution Cable	53%
	Copper Feeder	75%
	Fiber Feeder	77.50%
Digital Loop Carrier		
IDLC		100%
UDLC		0%
Assuming 60% of Loops Served by DLC		
Support Structures		
Pole Unit Cost		$733.67
Drop Length		73 ft.
Structure Percentages		
Aerial		60.0%
Aerial-No Poles		0.00%
Buried		15.0%
Underground		25.0%
Cost of Capital		
	Debt	8.07%
	Equity	10.00%
	Debt/Equity Ratio	60.94/39.06
Overall Weighted Cost of Capital		8.82%
Depreciation		WorldCom Lives
Expense Factors	1) Remove all Advertising Expenses 2) Hold Expense Factors Constant as a % of Investment over Life of Study	
Common Costs		10%
Gross Revenue Loading		0.004007

SWITCHING ASSUMPTIONS

Lucent	5ESS
Nortel	DMS
Siemens	ESWD

Weighting
Replacement
Growth

		Replacement	Growth	
Switch Discounts				**EFFECTIVE RATE**
Lucent	5ESS	XXX	XXX	XXX
Nortel	DMS	XXX	XXX	XXX
Siemens	ESWD	XXX	XXX	XXX

NON-RECURRING COSTS AND ASSUMPTIONS

The Company is further directed to re-run its non-recurring cost models to include all the aforementioned revisions, where appropriate. In addition, Service Disconnection should be increased to five (5) years. As a general matter, the Company must revise all non-recurring rates for service orders, C.O. wiring, provisioning, and field installations that were not revised by the Board, but include similar assumptions to those changed by the Board. For example, service orders for 4-wire loops and line ports are developed using a similar methodology to 2-wire loops. All such rates must be reduced to the level determined by the Board for a 2-wire loop. The same theory must apply to all rates and categories.

In addition, for all activities associated with the non-recurring rates not specifically revised by the Board, the Company must revise all similar tasks to account for the following:

1) Revise all travel times to 20 minutes;
2) Adjust the time estimates for all Additional Lines to be equal to the time associated with Initial Lines where the Additional Line is greater;
3) Eliminate all computer connect times for Additional Lines in recognition that the tasks for the Initial and Additional Lines will be performed within the allotted time for the Initial Line;
4) Eliminate all times associated with notifying a CLEC to complete an order in recognition that the tasks for the Initial and Additional Lines will be performed within the allotted time for the Initial Line;

5) Eliminate all times associated with scheduling teams, contacting CLEC, verifying service orders, obtaining CLEC approval, completing order, and notifying team of cancellations for all Additional Lines in recognition that the tasks for the Initial and Additional Lines will be performed within the allotted time for the Initial Line;
6) Revise all times associated with gaining access to a premises, locating terminal, contacting MLAC and working with frame or RCC to 5 minutes;
7) Eliminate all field installation charges associated with Migration orders, and
8) Eliminate all manual translation times that are made obsolete by the flow through capabilities of OSS.

Very truly yours,

HENRY M. OGDEN
Acting Secretary

HB/sh
CC: Service List